

Date of decision: July 5, 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,19..

thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr.M.R.Anand, LGP with Mr.A.J.Desai, LAGP for the appellants in both

Mr.P.B.Majmudar, L.A. for the respondents in both.

Coram: N.J.Pandya & A.R.Dave,JJ.
July 5,1996

ORAL JUDGMENT (Per N.J.Pandya,J.)

Admit. With the consent of the parties these matters are taken up for final hearing.

2. These two appeals arose out of the judgment of the learned Extra Assistant Judge, Baroda, whereby he disposed of four Land Reference Cases. The appeals are directed against the finding with regard to Land Reference Cases 50 of 1982 and 69 of 1982. The said four matters were disposed of by a common judgment delivered on 29-4-1994.

3. So far as the market value that he has fixed is concerned, in our opinion, no interference is called for, because that is on the basis of an earlier award which has become final. The award is at Exh.68. Accordingly, for agricultural land, the rate fixed is Rs.18,000/- per hectar and for non-irrigated land Rs.15,000/- per hectar. However, in both these matters, as rightly pointed out by learned Government Pleader Shri Anand, amount has been awarded in respect of well also. On one hand, the land is treated to be irrigated only because of Well. Thus, due weightage has been given to the facility. Over and above this, Well is evaluated separately and compensation is given. Obviously, that is a wrong approach.

4. Well is very much a part of the land acquired and while arriving at its proper market value, the amenity in form of a well is certainly a factor to be considered and as in the instant case, the amenity like well would alone make the land an irrigated land. This being the position, obviously, this additional amount i.e. Rs.16,000/- in Land Reference Case no.50 of 1982 i.e. Appeal No.1021 of 1995 and Rs.24,000/- in Land Reference Case no.69 of 1982 i.e. F.A.No.1022 of 1995, granted in these two matters has to be struck down.

5. The appeals stand allowed to that extent with consequence of proportionate cost and interest with regard to the said amount pertaining to the Well. So far as the appeals are concerned, there is no order as to costs. No orders on Civil Application.
